MONTANA LEGISLATIVE HISTORY

Chapter 213 19 99

Bill H _____ S SB235 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	3/08	C	Hearing Date(s)	1/25	C
	3/11	C		ex 2/15	C
	_____	C		_____	C
	_____	C		_____	C
Date Out	_____	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/02	Committee Executive Action--Bill Passed	4	3
2/02	Committee Report--Bill Passed		
2/05	2nd Reading Passed	25	24
2/06	3rd Reading Passed	27	23
	Transmitted to House		
2/16	Referred to Business and Labor		
3/08	Hearing		
3/08	Tabled in Committee		
	Died in Standing Committee		

SB 235 Introduced by Wells, et al. *LC0762 Drafter: K. Williams*

Specify Criteria for a Presumption of Nonabandonment for Municipal Water Rights in Waters Classified as "A-Closed";...

1/19	Introduced and 1st Reading		
1/19	Referred to Natural Resources		
1/25	Hearing		
2/15	Committee Executive Action--Bill Passed as Amended	10	1
2/15	Committee Report--Bill Passed as Amended		
2/16	2nd Reading Passed	48	0
2/17	3rd Reading Passed	47	0
	Transmitted to House		
2/18	Referred to Natural Resources		
3/08	Hearing		
3/11	Committee Executive Action--Bill Concurred	19	1
3/11	Committee Report--Bill Concurred		
3/20	2nd Reading Concurred	96	0
3/22	3rd Reading Concurred	98	0
	Returned to Senate		
3/23	Sent to Enrolling		
3/23	Returned from Enrolling		
3/25	Signed by President		
3/26	Signed by Speaker		
3/29	Transmitted to Governor		
3/30	Signed by Governor		
3/31	Chapter Number Assigned		
	Chapter Number 213		
	Effective Date: 3/30/1999 - All Sections		

SB 236 Introduced by Doherty, et al. *LC0432 Drafter: Lane*

Generally Revise the Offense of Criminal Syndicalism Law;...

1/19	Introduced and 1st Reading		
1/19	Referred to Judiciary		
1/27	Hearing		
2/02	Committee Executive Action--Bill Passed as Amended	7	1
2/02	Committee Report--Bill Passed as Amended		
2/05	2nd Reading Passed	39	10
2/06	3rd Reading Passed	39	9
	Transmitted to House		
2/16	Referred to Judiciary		

Senate BILL NO. 235

INTRODUCED BY _____ (Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING CRITERIA FOR A PRESUMPTION OF NONABANDONMENT FOR MUNICIPAL WATER RIGHTS IN WATERS CLASSIFIED AS "A-CLOSED"; AMENDING SECTION 85-2-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-227, MCA, is amended to read:

"**85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment -- criteria for presumption of municipal nonabandonment.** (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) ~~A~~ Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), a water right that is claimed for municipal use from a water classified by the board of environmental review as of January 1, 1999, as A-Closed under administrative rule and that is claimed by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be totally or partially abandoned if there is admissible evidence that the city, town, or other public or private entity has:

(a) used any part of the water right for municipal water supply;

(b) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(c) acquired, constructed, or maintained diversion or conveyance structures for the future municipal use of the water right;

(d) conducted a formal study of the reasonably expected municipal water supply needs or supplies of the city, town, or other public or private entity;

(e) conducted a formal environmental or engineering study for the feasibility of using the water right for municipal supply;

(f) expended funds to protect water quality of the A-Closed waters; or

(g) maintained facilities to apply the water right to an emergency or supplemental municipal water supply."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 25, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 235, 1/25/1999
Executive Action: SB 40

HEARING ON SB 235

Sponsor: **SENATOR JACK WELLS, SD 14, BOZEMAN**

Proponents:

Arvid Hiller, Vice President and General Manager, Mountain Water Co., Missoula
Carl Stetzner, Chief Executive Officer, Anaconda-Deer Lodge Co.
Mike Grayson, County Attorney, Anaconda-Deer Lodge County
Carl Schweitzer, Bozeman Chamber of Commerce
REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN
SENATOR BEA McCARTHY, SD 29, ANACONDA

Opponents: None.

Opening Statement by Sponsor:

SENATOR JACK WELLS, SD 14, BOZEMAN, spoke in support of SB 235 which addresses important municipal water rights and amends sections of Title 85 that govern these water rights. It recognizes certain activities by municipal organizations that would suffice to guarantee their water rights in future years. There is some concern that non-use of their water rights over a period of time might be presumed to mean they are abandoning these rights and that is what they want to prevent. He pointed out that this bill does not create a municipal preference as found in other states. It does establish a set of criteria which could be used as evidence to apply to questions of abandonment of the municipal water rights. The bill is limited in that it does apply to A-closed waters and those categories of A-closed are the highest classification of water in the state. There are about 15 sources of water and these are all in the western part of Montana. **EXHIBIT(1)** & **EXHIBIT(2).** The bill does not exempt water rights in these basins from a challenge if someone thinks there is abandonment but it simply establishes a set of criteria the court could consider if someone does suggest that the water rights had been abandoned. The major concern is long-term protection. If the municipalities do engage in certain specific activities that are listed in the bill then there is a presumption against abandonment.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.2; Comments : None.}

Proponents' Testimony:

Arvid Hiller, Vice President and General Manager, Mountain Water Company, Missoula spoke in support of SB 235 as per attached tesitmony. **EXHIBIT(3).**

Carl Stetzner, Chief Executive Officer of Anaconda-Deer Lodge County, spoke in support of SB 235 as per attached testimony. **EXHIBIT(4).**

Mike Grayson, County Attorney for Anaconda-Deer Lodge County spoke in support of SB 235. Anaconda-Deer Lodge is a consolidated city-county government. Their problem, at this point in time, is the Hearst Lake-Fifer drainage has not been used for municipal purposes for about twenty years (1979). To bring the Hearst Lake-Fifer system into the domestic water system will cost about $1,000,000. Anaconda is a small municipality with about 7000-8000 water users in the system and will require a vote under CI-75 for a rate increase. They do not want to go to the voters and ask for an increase and meanwhile find out the water right has been abandoned.

According to several Supreme Court decisions, there is essentially a presumption of abandonment that occurs after that much non-use. The money they have spent in planning, design, and feasibility studies to bring Hearst Lake-Fifer back into the system would be used as arguments in court to show why they think they have not abandoned their water right. With the current statute there is not really any statutory guidance, however, for the court to determine their water rights are not abandoned. The Hearst Lake-Fifer water rights were purchased from Butte Water Co. in 1992. They are over 100 year old water rights and they do not want to lose them. They feel this legislation would prevent them from ever being deemed abandoned by a court and ask for the committee's support of this bill.

Carl Schweitzer, Bozeman Chamber of Commerce, spoke in support of SB 235. Lyman-Sourdough Creek in Bozeman is affected by this legislation and they feel it is important that this water right be maintained as a source for municipal consumption.

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, spoke in support of SB 235. She is an attorney representing the City of Bozeman as well as a Representative from HD 28 in Bozeman.

The City of Bozeman has two sources of water that are on A-Closed streams - Lyman Creek and Sourdough Creek. A significant portion of Bozeman's water comes from Hylite Creek a/k/a Middle Creek. A-Closed streams are the highest quality water available in Montana and consequently do not require as much treatment before the water can be used for public water supply.

The Mystic Lake water right on Sourdough Creek is the most commonly known Bozeman water right affected by this bill. In order to protect the right, the city has undertaken significant

steps to demonstrate there is no intention to abandon that water right. They have conducted engineering studies and feasibility studies to find alternate locations in Sourdough Canyon to rebuild that reservoir at some point in the future when the city's needs for the additional water arise. Bozeman is one of the faster growing communities in Montana and the need to use water out of this right is a certainty which they estimate at about twenty years.

Basic water law in Montana is on the doctrine of prior appropriation and the primary tenant of that is, quite simply, use it or lose it. Our Supreme Court says mere non-use is not sufficient to abandon a water right but non-use with an intention to abandon renders an unused right - abandoned. The court also says long periods of non-use raise a rebuttable presumption of abandonment.

SB 235 will place municipal rights on A-Closed streams only. No other sources of water will be affected by this. It will place those in a situation of being presumed not to be abandoned. This will save potentially $1,000's of dollars in litigation expenses should someone or some entity challenge certain municipal water rights which are in a period of non-use right now.

SB 235 will also partially codify what is known as the great and growing cities doctrine which has been espoused by the Supreme Court of other states. It originally came out of Colorado's Supreme Court and had to do with the City of Denver. This bill will not in any way give municipalities a carte blanche permit to quit using some of their water rights or to ignore any unused water rights. In order for a right to be protected under this bill, there is a list of things that a municipality must do in order for their right to be presumed not abandoned. **SB 235** will change the evidentiary standard. It changes the burden of proof that one has in order to find that a water right has been abandoned. It also changes what one has to do in order to protect it. This bill helps us to plan for the future. She urged the committee to take this small but important step in protecting a critical portion of Montana water rights and respectfully requested DO PASS on this bill.

SENATOR BEA McCARTHY, SD 29, ANACONDA, went on record in support of SB 235.

Opponent Testimony: None

Informational Testimony:

Mike Murphy, Montana Water Resources Association, stated while this particular issue does deal with some important needs associated with municipalities, the fact the bill is very specifically and narrowly defined regarding A-Closed waters probably does not have a significant impact, at this point in time, regarding the overall issue of water rights abandonment. He stated they do want to register concern regarding the precedents this may set regarding municipalities and their interests similar or preferential treatment down the road. They also want to go on record in commenting, that given the statues that are in place at this time, it would most likely be the interpretation of the Water Court that they would look at these evidentiary issues when taking into consideration the abandonment issue. Down the road this could open the flood gates.

{Tape : 1; Side : A; Approx. Time Counter : 4.2 - 28.4; Comments : None.}

Questions from Committee Members and Responses:

SENATOR GROSFIELD stated on Line 24 it says water right. Is a permit a water right or would it be interpreted to be a water right under this language and the same question in regard to a water reservation? **Jack Stults, Division Administrator for Water Resources, DNRC,** stated yes, under the definitions of the Water Use Act, of which this is a part, both a permit and a reserved water right would be considered an appropriation.

SENATOR GROSFIELD stated this bill goes through a list of A-G and would presume all the proponents testifying today qualify under all of those. Is the bill drafted with that in mind? **Mike Grayson** responded he was not sure each of the three municipalities testifying today would meet each one of these for various reasons.

SENATOR GROSFIELD stated he was struggling with the implications of (a). If a municipality applied for a water right or claimed a water right in 1880 or 1950 for 250 cubic feet per second (cfs), and under the adjudication process registered a claim for that, however, they are using only 5 cubic feet per second (cfs). Under this bill they have used part of their water supply, would this guarantee they would never lose the other 245 cfs? **Jack Stults** responded this was his understanding. If at any time in history, any part of the water right has been used, it means they could never lose any of the right. **SEN. GROSFIELD** also stated there was nothing stated in the bill regarding potential sale. Theoretically, if they never could lose it, then at any time in the future they could sell a part of it to another user assuming they went through the change process. **Jack Stults** responded that

was correct, it may lose its character if sold to another use but his reading of this currently is that it would retain that character until after the change process.

SENATOR GROSFIELD questioned if the Water Court would deal with a basin that is not yet adjudicated and maybe has not been issued a temporary preliminary decree yet. If there were a claim that most people would agree was not quite into play yet, how is a water court going to deal with that claim if we pass this bill in its current form? **REPRESENTATIVE YOUNKIN** said the arguments she would make to the court, under this scenario, would be in order for protection under the statute. The municipality would have had to do any one or more of items a - g. That being the case, her argument would then be that the legislature's intent was to protect the ability of the city to be able to use that right: 1) because it is on an A-Closed stream and clean water is getting harder and harder to come by, 2) the great and growing cities doctrine. That is what this statute would do, give cities the assurance they will have that water right in the future when they need it if they have done certain things to get it and were on a very high quality water source. **SEN. GROSFIELD** stated he was a little troubled by the broadness of the bill. We are almost creating something equivalent to a federal reserved water right in the sense of for an Indian Tribe. He was not sure that it made sense to tie our hands for that many years. **REP. YOUNKIN** said the water rights we know about, affected by this, are from 2 to 5 cfs. There very well could be some that might be affected that are in a period of non-use.

SENATOR KEATING questioned if the right could not be transferred by the city at sometime? **REP. YOUNKIN** replied it could. In order for any city to sell their municipal water right to anybody else, they have to go through a change application. That change in purpose is a pretty uncommon change and there is a fairly high standard applied to that. You would have to show that nobody will be adversely affected by the change, which is a very difficult thing to do.

{Tape : 1; Side : A; Approx. Time Counter : 28.4 - 43.5; Comments : Turned over to Side B at this point.}

SENATOR TAYLOR questioned what about the private users that have irrigating rights who may not have used them for ten years. They are old rights from the late 1800's or early 1900's, how does this legislation connect? **Mike Murphy**, this bill does not apply to rights outside of municipalities. Our concern is very similar to what you have stated. There are other rights, in similar condition, that for whatever reasons have not been used. Some things may have been done to protect those interests but

they are still subject to a challenge associated with the potential issue of abandonment. The same issues really apply across the board to water rights, so this does treat one segment differently with a preference in regard to the abandonment issue. That is why I raised the concern that this could open up the flood gates, in a sense, particularly with municipalities and the implications of the impacts that could be felt if this gets outside of this specific and narrow defined area. **SEN. TAYLOR** questioned if this affected the adjudication rights at all? What if someone were given an abandoned right? **Jack Stults** responded there are twelve municipalities affected that would be protected by this on the fifteen different drainages. None of the sources of water are in a final decree so there is still opportunity for some determination to be made by the court as to whether there is an abandonment issue. None of them are finally settled by the current statewide adjudication.

SENATOR MAHLUM gave an example of a city having an old water right they have not used which is class A-Closed. Also on the stream are several farms and ranches which have used water out of the stream. Could the city say we always water out of that stream? **Jack Stults** said if the city has an old right and actually senior to the ranchers and farmers, under this law, and actually if it were found to be a valid right through the adjudication, yes they could come and expand the use of it and at the peril of the junior water rights.

SENATOR McCARTHY asked Mr. Grayson if there was anything he would like to add? **Mr. Grayson** stated what makes municipal water rights different, and deserving of being a little different, is when there is a closed water shed. To a certain degree the Department has already looked, and said this area should be clean enough to be a good drinking water surface. For a municipality to put the kind of investments necessary into the improvements to bring this into municipal use, there needs to be some certainty that it will not be taken away in a court proceeding resulting in the junior users now becoming the senior users.

SENATOR GROSFIELD stated the unclassification system says that you cannot go down. The state cannot make a stream go down in classification. Is it likely that we will see any more A-Closed streams? **Jack Stults** stated he was not familiar enough with the classification system and the dynamics of it to be able to answer the question. **SEN. GROSFIELD** then questioned if the Department issued any permits on A-Closed waters for any non-drinking water purpose? **Jack Stults** responded he could not specifically say that they have but there is nothing that would prohibit them from doing that as long as the criteria was met.

SENATOR GROSFIELD stated, according to the testimony, it was his impression people were interested in protecting the water right claims they now have, in the adjudication process that is on-going. Would this bill not need a retroactive applicability date in order to give them any help? Otherwise it is just effective upon passage and approval and it would probably not affect any prior rights and proceedings without a retroactive applicability date. **Larry Mitchell** agreed that could be a concern. He would check with chief legal counsel.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.3; Comments : None.}

Closing by Sponsor:

SENATOR JACK WELLS stated this bill is narrow in scope, a lot of criteria has been listed the municipalities would have to meet in order to try to protect these water rights. The questions raised are important and perhaps the effectivity of the bill may be addressed. In general, they tried to structure something that was best for the most in the sense of the numbers of people that would be affected in these municipalities across western Montana as the population grows and the need for additional water is required. Regarding the comment that it may open the door for other things, other water right challenges could be faced in future legislative efforts and would probably appear before this committee to handle those kind of things. In the sense of the A-closed watersheds, he thinks this bill would be a good step to protect the future for these communities and their aquifers and thanked the committee for the good hearing.

{Tape : 1; Side : B; Approx. Time Counter : 7.3 - 8.8; Comments : None.}

EXECUTIVE ACTION ON SB 40

Motion/Vote: SEN. KEATING moved that **SB 40 DO PASS. Motion carried 9-0.** No amendments were offered.

STATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 1-25-99
BILL NO. SB 235

MONTANA A-CLOSED DRAINAGES

Fifteen drainages in Montana are classified as A-closed watersheds. ARM §§17.30.607, 17.30.608, 17.30.610 (1998). Those drainages are as follows:

Hearst Lake drainage to the Lower Hearst Inlet and Fifer gulch drainage to the Anaconda city limits (Anaconda municipal water supply);

Yankee Doodle drainage to and including the North Butte water supply reservoir, Basin Creek drainage to and including the South Butte water supply reservoir;

Tin Cup Joe Creek drainage to the Deer Lodge water supply intake, Fred Burr Lake and headwaters from source to the outlet of the lake;

Rattlesnake Creek drainage to the Missoula water supply intake;

Ashley Creek drainage to the Thompson Falls water supply intake;

Essex Creek drainage to the Essex water supply intake;

Hellroaring Creek drainage to the Polson water supply intake;

Second Creek drainage to the Ronan water supply intake;

Hot Springs Creek drainage to the Hot Springs water supply intake;

Lyman and Sourdough (Bozeman) Creek drainage to the Bozeman water supply intakes;

Willow Creek drainage to the White Sulphur Springs water supply intake;

Midvale Creek drainage to the East Glacier water supply intake;and

Summit Creek drainage to the Summit water supply intake.

NATURAL RESOURCES
EXHIBIT NO. 2
DATE 1-25-99
BILL NO. SB 235

17.30.620 SPECIFIC SURFACE WATER QUALITY STANDARDS--GENERAL (1) Specific surface water quality standards, along with general provisions in ARM 17.30.635 through 17.30.637, 17.30.640, 17.30.641, 17.30.645 and 17.30.646, protect the beneficial water uses set forth in the water-use descriptions for the following classifications of water.

(2) Standards for organisms of the coliform group are based on a minimum of 5 samples obtained during separate 24-hour periods during any consecutive 30-day period analyzed by the most probable number or equivalent membrane filter methods. (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.621 A-CLOSED CLASSIFICATION STANDARDS (1) Waters classified A-Closed are suitable for drinking, culinary, and food processing purposes after simple disinfection. Water quality is suitable for swimming, recreation, growth, and propagation of fishes and associated aquatic life, although access restrictions to protect public health may limit actual use of A-Closed waters for these uses.

(2) Public access and activities such as livestock grazing and timber harvest are to be controlled by the utility owner under conditions prescribed and orders issued by the department.

(3) No person may violate the following specific water quality standards for waters classified A-Closed:

(a) The geometric mean number of organisms in the coliform group must not exceed 50 per 100 milliliters.

(b) No change from naturally occurring dissolved oxygen levels is allowed.

(c) No change from natural pH is allowed.

(d) No increase above naturally occurring turbidity is allowed.

(e) No increase above naturally occurring water temperature is allowed.

(f) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) No increase in true color is allowed.

(h) No increases of carcinogenic, bioconcentrating, toxic or harmful parameters, pesticides and organic and inorganic materials, including heavy metals, above naturally occurring concentrations, are allowed.

(i) No increase in radioactivity above natural background levels is allowed. (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff.

17.30.606 STREAM CLASSIFICATION (1) Before streams are classified or standards established or modified, the board shall hold a public hearing.

(a) Notice of the hearing specifying the waters concerned and the classification, standards or modification of them shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected.

(b) Notice shall also be mailed directly to persons the department believes may be affected by the proposed action.

(c) The water pollution control advisory council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(d) The general rules of procedure found in ARM 17.4.101 relating to rulemaking will be followed. (History: 75-5-201, MCA; IMP, 75-5-307, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.607 WATER-USE CLASSIFICATIONS--CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in (a)-(n) below B-1

(a) Warm Springs drainage to Myers Dam near Anaconda A-1

(i) Hearst Lake drainage to the Lower Hearst Inlet and Fifer Gulch drainage to the Anaconda city limits. (Anaconda municipal water supply) . . . . . .A-Closed

(b) Silver Bow Creek (mainstem) from the confluence of Blacktail Deer Creek to Warm Springs Creek. . . . . I (The concentrator tailings pond and Silver Bow Creek drainage from this pond downstream to Blacktail Deer Creek and the tailings ponds at Warm Springs have no classification.)

(c) Yankee Doodle Creek drainage to and including the North Butte water supply reservoir . . . . . .A-Closed

(d) Basin Creek drainage to and including the South Butte water supply reservoir . . . . . .A-Closed

(e) Clark Fork River (mainstem) from Warm Springs Creek to Cottonwood Creek (near Deer Lodge) C-2

(f) Clark Fork River (mainstem) from Cottonwood Creek to the Little Blackfoot River C-1

(g) Tin Cup Joe Creek drainage to the Deer Lodge water supply intake . . . . . A-Closed

(h) Georgetown Lake and tributaries above Georgetown Dam (headwaters of Flint Creek drainage) A-1

(i) Fred Burr Lake and headwaters from source to the outlet of the lake (Philipsburg water supply) . . . . A-Closed

(j) South Boulder Creek drainage to the Philipsburg water supply intake A-1

(k) Rattlesnake Creek drainage to the Missoula water supply intake . . . . . A-Closed

(l) Packer and Silver Creek drainage (tributaries to the St. Regis River) to the Saltese water supply intake A-1

(m) Ashley Creek drainage to the Thompson Falls water supply intake . . . . . A-Closed

(n) Pilgrim Creek drainage to the Noxon water supply intake A-1

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1988 MAR p. 1191, Eff. 6/10/88; AMD, 1994 MAR p. 3099, Eff. 12/9/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.608 WATER-USE CLASSIFICATIONS--FLATHEAD RIVER DRAINAGE The water-use classifications adopted for the Flathead River are as follows:

(1) Flathead River drainage above Flathead Lake except waters listed in (a)-(h) below B-1

(a) Essex Creek drainage to the Essex water supply intake . . . . . A-Closed

(b) Stillwater River (mainstem) from Logan Creek to the Flathead River B-2

(c) Whitefish Lake and its tributaries A-1

(d) Whitefish River (mainstem) from the outlet of Whitefish Lake to the Stillwater River B-2

(e) Haskill Creek drainage to the Whitefish water supply intake A-1

(f) Ashley Creek (mainstem) from Smith Lake to bridge crossing on the airport road about 1 mile south of Kalispell B-2

(g) Ashley Creek (mainstem) from bridge crossing on airport road to the Flathead River C-2

(h) North and middle forks of the Flathead River above their junction A-1

(2) Flathead Lake and its tributaries from Flathead River inlet to US Highway 93 bridge at Polson except Swan River and portions of Hellroaring Creek as listed in (a)-(c) below but including Swan Lake proper and Lake Mary Ronan proper. . A-1

(a) Swan River drainage (except Swan Lake proper) . . B-1

(b) Hellroaring Creek drainage to the Polson water supply intake . . . . . A-Closed

(c) Remainder of Hellroaring Creek drainage B-1

(3) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed in (a)-(h) below B-1

(a) Second Creek drainage to the Ronan water supply intake . . . . . A-Closed

(b) Crow Creek (mainstem) from road crossing in Section 16, T20N, R20W to the Flathead River B-2

(c) Little Bitterroot River (mainstem) from Hubbart Reservoir dam to the Flathead River B-2
(d) Hot Springs Creek drainage to the Hot Springs water supply intake . . . . . A-Closed
(e) Hot Springs Creek (mainstem) from the Hot Springs water supply intake to the Little Bitterroot River C-3
(f) Tributaries to Hot Springs Creek (if any) from the Hot Springs water supply intake to the Little Bitterroot River B-1
(g) Mission Creek drainage to the St. Ignatius water supply intake A-1
(h) Mission Creek (mainstem) from US Highway No. 93 crossing to the Flathead River B-2
(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1982 MAR p. 1745, Eff. 10/1/82; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.609 WATER-USE CLASSIFICATIONS--KOOTENAI RIVER DRAINAGE The water-use classifications adopted for the Kootenai River are as follows:
(1) All waters except those listed in (a)-(d) below . B-1
(a) Deep Creek drainage (tributary to the Tobacco River) to the Fortine water supply intake A-1
(b) Rainy Creek drainage to the W.R. Grace Company water supply intake A-1
(c) Rainy Creek (mainstem) from the W.R. Grace Company water supply intake to the Kootenai River C-1
(d) Flower Creek drainage to the Libby water supply intake A-1
(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

NEXT PAGE IS 17-2701

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES The water-use classifications adopted for the Missouri River are as follows:

(1) Missouri River drainage to and including the Sun River drainage except tributaries listed in (a) through (m) below B-1

(a) East Gallatin River (mainstem) from Montana Highway No. 293 crossing about one-half mile north of Bozeman to Dry Creek about 5 miles east of Manhattan B-2

(b) Lyman and Sourdough (Bozeman) Creek drainages to the Bozeman water supply intakes . . . . . A-Closed

(c) Hyalite Creek drainage to the Bozeman water supply intake A-1

(d) Big Hole River drainage to Butte Water Company intake above Divide A-1

(e) Rattlesnake Creek drainage to the Dillon water supply intake A-1

(f) Indian Creek drainage to the Sheridan water supply intake A-1

(g) Basin Creek drainage to the Basin water supply intake A-1

(h) McClellan Creek drainage to the East Helena water supply intake A-1

(i) Prickly Pear Creek (mainstem) from the Montana Highway No. 433 crossing about 1 mile northwest of East Helena to Lake Helena I

(j) Ten Mile Creek drainage to the Helena water supply intake A-1

(k) Willow Creek drainage to the White Sulphur Springs water supply intake . . . . . A-Closed

(l) Muddy Creek mainstem (tributary of Sun River) . . . I

(m) Sun River (mainstem) from Muddy Creek to the Missouri River B-3

(2) Missouri River drainage from Sun River to Rainbow Dam B-2

(3) Missouri River drainage from Rainbow Dam in Great Falls to the Marias River except waters listed in (a) through (d) below B-3

(a) Belt Creek drainage to and including Otter Creek drainage except portion of O'Brien Creek listed in (i) below B-1

(i) O'Brien Creek drainage to the Neihart water supply intake A-1

(b) Belt Creek (mainstem) from Otter Creek to the Missouri River B-2

(c) Tributaries to Belt Creek from Otter Creek to the Missouri River B-1

(d) Highwood and Shonkin Creek drainages B-1

(4) Marias River drainage except the tributaries and

segments listed in (a) through (f) below B-2
(a) Cutbank Creek drainage except waters listed in (i) and (ii) below B-1
(i) Willow Creek (mainstem) from the Montana Highway No. 464 crossing about one-half mile north of Browning to Cutbank Creek B-2
(ii) Cutbank Creek (mainstem) from Old Maid Miller Coulee near Cut Bank to Birch Creek B-2
(b) Two Medicine Creek drainage except for the waters listed in (i) through (iii) below B-1
(i) Midvale Creek drainage to the East Glacier water supply intake . . . . . A-Closed
(ii) Summit Creek drainage to the Summit water supply intake . . . . . A-Closed
(iii) Two Medicine Creek (mainstem) from Badger Creek to Birch Creek B-2
(c) Dry Fork Marias River (mainstem) from Interstate 15 crossing near Conrad to Marias River B-3
(d) Teton River drainage to and including Deep Creek near Choteau B-1
(e) Marias River mainstem from Tiber Dam to the county road crossing in section 17, T29N, R5E B-1
(f) Teton River below Highway (Interstate) 15 . . . . B-3
(5) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in (a) through (f) below . . . C-3
(a) Missouri River (mainstem) from Marias River to Fort Peck Dam B-3
(b) Eagle Creek drainage to but excluding Dog Creek . B-1
(c) Judith River drainage except waters listed in (i) through (iv) below B-1
(i) Judith River (mainstem) from Big Spring Creek to the Missouri River B-2
(ii) Sage Creek drainage below US Highway 87 . . . . . C-3
(iii) Wolf Creek drainage below US Highway 87 . . . . . C-3
(iv) Tributaries to Judith River from Big Spring Creek to the Missouri River C-3
(d) Cow Creek drainage to but excluding Al's Creek . . B-1
(e) Musselshell River drainage to Deadman's Basin diversion canal above Shawmut except for the water listed in (i) below B-1
(i) Musselshell River (mainstem) from Hopley Creek to Deadman's Basin Diversion Canal near Shawmut B-2
(f) Musselshell River drainage below Deadman's Basin diversion canal above Shawmut except for the waters listed in (i) through (iv) below C-3
(i) Deadman's Basin Reservoir B-1
(ii) Careless and Swimming Woman Creek drainage

above their confluence north of Ryegate B-1
(iii) Flatwillow Creek drainage above US Highway 87 crossing south of Grassrange B-2
(iv) South Willow Creek drainage above county road bridge in T10N, R24E, section 7 . . . . . B-1
(6) Missouri River drainage from Fort Peck Dam to the Milk River B-2
(7) Milk River drainage from source (or from the Glacier National Park Boundary) to the International Boundary . . . B-1
(8) Milk River drainage from the International Boundary to the Missouri River except the tributaries listed in (a) through (d) below B-3
(a) Sage Creek drainage to the section line between sections 1 and 12 T36N R5W B-1
(b) Big Sandy Creek drainage to Town of Big Sandy infiltration wells B-1
(c) Beaver, Little Box Elder and Clear Creek drainage (near Havre) B-1
(d) Peoples Creek drainage to and including the South Fork of Peoples Creek drainage B-1
(9) Missouri River drainage from Milk River to North Dakota boundary except waters listed in (a) through (d) below C-3
(a) Missouri River (mainstem) from Milk River to North Dakota boundary B-3
(b) Wolf Creek drainage near Wolf Point B-2
(c) Antelope Creek drainage near Antelope B-3
(d) Poplar River drainage B-2

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1982 MAR p. 1745, Eff. 10/1/82; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 2489, Eff. 9/11/98.)

17.30.611 WATER-USE CLASSIFICATION--YELLOWSTONE RIVER DRAINAGE The water-use classifications adopted for the Yellowstone River are as follows:

(1) Yellowstone River drainage to the Laurel water supply intake B-1

(2) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake except the tributaries listed in (a)-(c) below B-2

(a) Clarks Fork Yellowstone River drainage from source to the Wyoming state line and from the Wyoming state line to and including Jack Creek near Bridger B-1

(b) Mainstem of the Clarks Fork River from Jack Creek to the Yellowstone River B-2

(c) Tributaries to the Clarks Fork Yellowstone River from Jack Creek to the Yellowstone River except the portion of West Fork of Rock Creek listed in (i) below B-1

(i) West Fork of Rock Creek drainage to the Red Lodge water supply intake A-1

(3) Yellowstone River drainage from the Billings water supply intake to the North Dakota state line and including the Big Horn River drainage except the waters listed in (a)-(f) below C-3

(a) Yellowstone River mainstem B-3

(b) Pryor Creek drainage to Interstate 90 . . . . . B-1

(c) Big Horn drainage above but excluding Williams Coulee near Hardin B-1

(d) Little Big Horn drainage above and including Lodgegrass Creek drainage near Lodge Grass B-1

(e) Remainder of the Little Big Horn drainage B-2

(f) Big Horn River mainstem from Williams Coulee to Yellowstone River B-2

(4) Yellowstone River drainage from Big Horn River to North Dakota boundary except waters listed in (a)-(d) below. C-3

(a) Yellowstone River mainstem from Big Horn River to North Dakota boundary B-3

(b) Tongue River (mainstem) from Wyoming boundary to Prairie Dog Coulee B-2

(c) Tongue River mainstem from Prairie Dog Coulee to Yellowstone River B-3

(d) Fox Creek drainage near Sidney B-2

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.612 WATER-USE CLASSIFICATIONS--LITTLE MISSOURI RIVER DRAINAGE--BELLE FOURCHE DRAINAGE (1) The water-use classifications adopted for all waters in the Little Missouri and Belle Fourche drainages are . . . . . C-3 (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.613 WATER-USE CLASSIFICATIONS--HUDSON BAY DRAINAGE The water-use classifications for the Hudson Bay drainage are:

(1) All waters outside Glacier National Park . . . . . B-1 (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.614 WATER-USE CLASSIFICATIONS--NATIONAL PARK, WILDERNESS AND PRIMITIVE AREA WATERS The water-use classifications for all national park, wilderness and primitive area waters are as follows:

(1) All waters even if classifications listed in ARM 17.30.607 through 17.30.613 imply or state otherwise . . . . A-1 (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

Rules 17.30.615 through 17.30.619 reserved

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-25-99
BILL NO. SB 235

MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
AS A SUPPORTER OF

SENATE BILL 235
SENATE COMMITTEE LOCAL GOVERNMENT

Mr. Chairman Crismore, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am the Vice-President and General Manager of Mountain Water Company in Missoula, Montana. I am here as a proponent of Senate Bill 235. Mountain Water Company is an investor owned water utility which has 18,000+ connections in Missoula, serving potable water to over 50,000 residents. Mountain Water Company is regulated by the Montana Public Service Commission and has been in existence as Mountain Water Company since 1979, when it was purchased from Montana Power Company.

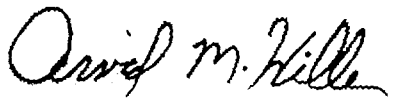
Some of the history of Rattlesnake water use dates back into the early 1900's. There were natural dams at the head waters of the Rattlesnake Creek, and they were added to in the early 1900's to increase the area and the amount of water they would impound. In 1980, the U.S. Congress created an act called the Rattlesnake National Recreation Area and Wilderness Act of 1980. In this act, it recognized the unique nature and importance of the Rattlesnake watershed as a water supply dedicated to municipal use, by saying: *"Nothing in this act (16 USCS 46011 ET SEQ) shall be construed to permit the secretary to affect or diminish any water right which is vested under either state or federal law at the time of enactment of this act (enacted October 19, 1980), nor the rights of the owner of such water right to the customary and usual access, including necessary motorized use over and along existing roads and trails to any facilities used in connection therewith and right to operate and maintain such facilities."*

Historically, the Rattlesnake supplied about 40% of the potable water for Missoula until 1983. In 1983, there was a giardiasis outbreak. As a lot of Montanan's know, it is called backpacker's disease. Because of this, Mountain Water Company discontinued use of the Rattlesnake as an active supply, but it continues to be a valuable emergency supply. Mountain Water Company continues to maintain the dams in the Rattlesnake Wilderness drainage and the functionality of the impoundment and diversion facility just below the recreation area.

Future considerations of need is the growth Western Montana has experienced recently, and that resource needs to be there for the future growth. But not least of the considerations are some of the contamination possibilities that exist within the Missoula area. One is the Milltown Dam that is immediately above the aquifer and has the opportunity to contaminate the Missoula groundwater supply with arsenic and a remote possibility with heavy metals contamination. There are also pending and emerging EPA regulations that have tighter and tighter restrictions on what is allowed in the potable water supplies. Those opportunities exist in the future when the regulations require a certain level, to introduce the Rattlesnake Creek back in with treatment technology to be part of the water supply. One example of this is Radon standards. The standards for Radon are becoming more restrictive and pending in the next couple of years. Those standards will be low enough that, by including the Rattlesnake supply, we could blend it together with the existing groundwater wells in a more economic fashion and serve the community of Missoula.

We feel the language of Senate Bill 235 should be in current state statute. When a water supplier serving the needs of the community with drinking water, has maintained and planned for the utilization of water rights for its public, it should be evident there is no intent to abandon that resource for current or future generations. Essentially, that is what Senate Bill 235 does, and I urge your adoption of it.

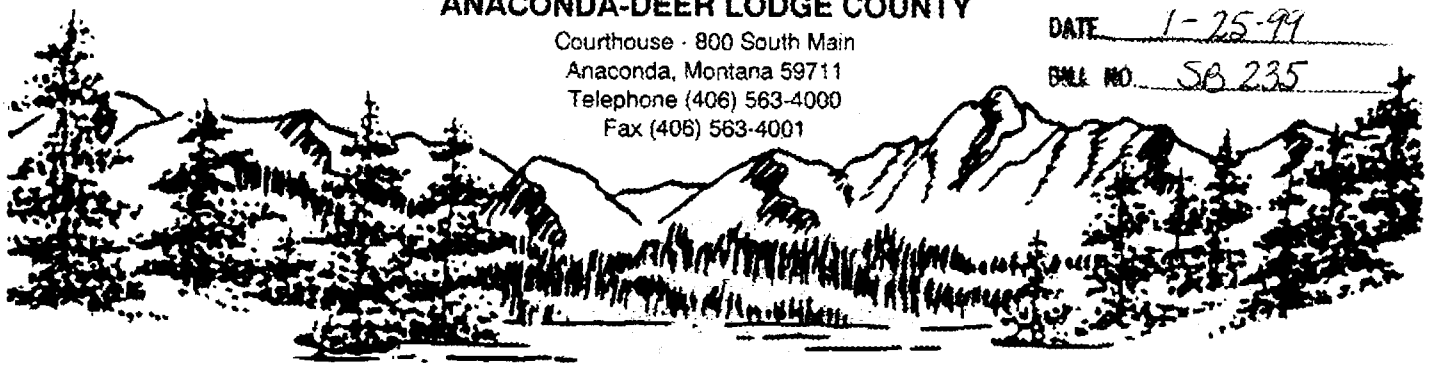
Thank you very much for your time and consideration in this matter.



Arvid M. Hiller

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 1-25-99
BILL NO. SB 235

ANACONDA-DEER LODGE COUNTY
Courthouse · 800 South Main
Anaconda, Montana 59711
Telephone (406) 563-4000
Fax (406) 563-4001



BEFORE THE SENATE HEARING COMMITTEE JANUARY 25, 1999

SENATE BILL 235

Mr. Chairman, members of the Committee. I am Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County.

Historically, water from Hearst Lake and Fifer Gulch was utilized by the Anaconda Company for both municipal and industrial applications. The Anaconda Company obtained the Fifer Gulch water rights in 1871 and 1888, and obtained the Hearst Lake water rights in 1898. Hearst Lake/Fifter Gulch was one of Anaconda's primary sources of water until 1938 when the upper reservoir dam within Fifer Gulch failed. This reservoir had provided storage for water from both watersheds. The source was reactivated in 1967, and Anaconda continued to utilize the water until 1979. Economics related to the Anaconda Company operations at the Anaconda Smelter and Berkeley Pit Mine are thought to be the driving reason for abandoning these water sources (historically the Anaconda Company ran both operations, as well as the Anaconda and Butte water systems). Since 1979, the water sources have been used for irrigation and livestock drinking water. Because of its historic corporate ownership, the area has not been impacted by development and public access has been restricted. Some cattle grazing has occurred over the years and recreational pursuits have included a minimal amount of permission only non-motorized hunting and fishing access.

After the Fifer Gulch dam had failed in 1938, the Hearst Lake pipeline had been rerouted into the city. Later, the Anaconda Company began using well water and water from Meyers' Dam which the company had constructed on Warm Springs Creek. Well water wasn't used extensively, perhaps six (6) months of the year because in the cold winter months it was difficult to chlorinate the water since it was frozen over and in the spring time when the turbidity of the water prohibited its use. Meyers dam situated on Warm Springs Creek became the city and smelter's main use of water.

Butte Water Company bought the Anaconda Company water division in 1957. They were responsible for supplying the city of Anaconda for its water. Sometime later, 1992 Anaconda-Deer Lodge County purchased the Anaconda Water division. Later on, Butte Water purchased the Silver Lake watershed from Washington Corporation and Anaconda lost its right to any water from that watershed. Therefore, Anaconda-Deer Lodge County had to drill a well field for water for the city of Anaconda.

Disconnect - Contaminated - back online

Anaconda no longer has access to the water from Meyers' dam. That water is owned by the Butte Water Company and was developed for use by Washington Corporation and ASIMIE Corporation interests. Anaconda was fortunate to recently obtain the water rights to Hearst Lake/Fifer Gulch.

Anaconda-Deer Lodge County recently spent millions of dollars in 1994 for a well field which is the cities only source of water at the present time. We have also spent thousands of dollars for engineering and design of the Hearst Lake watershed. The present well field is an insufficient source of water. Last summer, Anaconda had to place restrictions on the use of our well water. The demand for water far exceeded our ability to supply. The Hearst Lake/Fifer Gulch system needs to be reconnected to the existing in-use well source system in Anaconda. It is the least costly alternative source of water for Anaconda.

Anaconda would like to have the assurance that it has not spent all this money for engineering design and research in futility. We need assurance that our rights to water in the Hearst Lake watershed are not declared abandoned.

I would appreciate your support for SB 235. Thank you.

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE January 25, 1999

NAME	PRESENT	ABSENT	EXCUSED
SEN. BILL CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. TOM KEATING	X		
SEN. BEA MC CARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. MIKE TAYLOR	X		
SEN. BILL WILSON	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 40** (first reading copy -- white) **do pass**.

Signed: Wm L Crismore
Senator William Crismore, Chair

- END -

Committee Vote:
Yes 9, No 0.

200843SC.sjo

DATE 1-25-99

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 235
SB 40 - Executive Action

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Arvid Hiller	Mountain Water Co	235	X	
Doug Harrison	Mountain Water Co	235	X	
Carl Stetzner	Deer Lodge County	235	X	
Mike Grayson	" " "	235	X	
Carl Depweitzer	Bozeman Chamber	235	X	
MIKE MURPHY	MT. WATER RES. ASSN.	235	—	
Rep. Cindy Younkin	City & Bzn	235	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

LEGISLATIVE TAPE LOG

COMMITTEE: Senate Natural Resources

DATE: January 25, 1999

MINUTES	CONTENT NOTES
0-4.2	Opening Statement by Sponsor - Sen. Jack Wells SB 235
4.2-28.4	Proponent Testimony - SB 235 Informational Testimony
28.4-43.5	Questions from Committee & Responses - SB 235
SIDE B 0-7.3	Questions from Committee & Responses - SB 235
7.3-8.8	Closing by Sponsor - SB 235
8.8	Executive Action - SB 40

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 12, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 371, 2/12/1999; SB 313, 2/12/1999
Executive Action: SB 235; SB 314; SB 316; SB 362; SB 371

HEARING ON SB 371

Sponsor: **SENATOR KEN MESAROS, SD 25, CASCADE**

EXECUTIVE ACTION ON SB 235

Motion: **SEN. KEATING** moved that **SB 235 DO PASS.**

Motion: **SEN. GROSFIELD** moved that **SB 235 AMENDMENTS SB023501.ALM DO PASS. EXHIBIT(3).**

Discussion:

SENATOR GROSFIELD stated he wanted it clear in the statute that this was a special deal with regard to exception from abandonment and he did not want to have an open door for other people to come in and say they want out of abandonment too. The Whereas' set this out as a special situation dealing with A-closed drainages and diligence is tightened up so the committee would not be sorry this was opened up in the future. He appreciated working with **Mr. Crowley** on these amendments.

Vote: Motion that **SB 235 AMENDMENTS SB023501.ALM DO PASS carried 9-0.**

Motion/Vote: **SEN. GROSFIELD** moved that **SB 235 DO PASS AS AMENDED. Motion carried 10-1 with SENATOR TAYLOR voting no.**

EXECUTIVE ACTION ON SB 314

Motion: **SEN. MCCARTHY** moved **SB 314 DO PASS.**

Motion: **SEN. GROSFIELD** moved that **SB 314 AMENDMENTS SB031401.ALM DO PASS. EXHIBIT(4).**

Vote: Motion that **SB 314 AMENDMENTS SB031401.ALM DO PASS carried 9-0.**

Motion/Vote: **SEN. MCCARTHY** moved that **SB 314 DO PASS AS AMENDED. Motion carried 10-1 with SENATOR MILLER voting no.**

EXECUTIVE ACTION ON SB 316

Motion/Vote: **SEN. KEATING** moved that **SB 316 BE TABLED. Motion carried 9-0.**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 8, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Scott J. Orr (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 96, SB 97, SB 235, 3/3/1999
Executive Action: HB 158 Move to Subcommittee

development. He asked the committee when considering changes to make in-fill development easier to keep in mind there is not a support system in all the communities to guarantee the quality of the in-fill development. ***{Tape : 2; Side : A; Approx. Time Counter : 26.5 - 32.4}***

Questions from Committee Members and Responses: ***{Tape : 2; Side : A; Approx. Time Counter : 33 - 56; Comments: members discussed amendment suggestions}***

Closing by Sponsor: Sen. Stang closed. He asked that options be considered.

HEARING ON SENATE BILL 235

Sponsor: Sen. Jack Wells, SD 14, presented SB 235. He said the bill would help preserve the long term integrity of some of the most important municipal water rights and water supplies in the state. The bill is limited to certain water rights considered A-Closed. Municipalities will eventually need these waters. The bill does not give preference to municipal water rights like some other states have done. These rights could still be challenged if the municipalities did not do anything that indicated their future plan to use these water rights, but if they met some of the criteria then it was indicative of their intent to use those waters. The long term is the concern due to population growth and treatment of the water and changes in regulatory requirements and public need, sometimes unpredictable court decisions. This is why a certain level of protection was felt appropriate for these systems. ***{Tape : 2; Side : B; Approx. Time Counter : .5 - 6.6}***

Proponents: Arvid Hiller, representing Mountain Water Company of Missoula, Montana, was in favor of the bill. He had written testimony. **EXHIBIT(19)** ***{Tape : 2; Side : B; Approx. Time Counter : 6.6 - 13.4}***

Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County, spoke as a proponent. He presented written testimony regarding their need for water. **EXHIBIT(20)**

Phil Forbes, Director of Public Works for Bozeman, spoke as a proponent of the bill. He described the water treatment process and the need for future planning. ***{Tape : 2; Side : B; Approx. Time Counter : 14.7}***

Mike Greyson, County Attorney for Anaconda-Deer Lodge County, spoke in favor of the bill. He provided written testimony. SB

235 would give assurances that would allow them to know exactly what actions were required so that municipal water rights would not be deemed abandoned in some future court action. **EXHIBIT(21)** ***{Tape : 2; Side : B; Approx. Time Counter : 14.7 - 21}***

Rep. Cindy Younkin, HD 40, an attorney who practices water law, spoke in support of the bill. She said Montana water law was "use it or loose it". You can abandon a water right if you don't use it, but non use alone is not sufficient to abandon a water right. You have to have an intention to abandon that water right. The bill would put municipal rights on A-Closed streams in situations of showing they were not abandoned and potentially save thousands of dollars of litigation expense. ***{Tape : 2; Side : B; Approx. Time Counter : 21 - 24.7}***

Opponents: None.

Informational Witness: Jack Stultz, Division Administrator for the Water Resources Division in DNRC, said he was available for questions. ***{Tape : 2; Side : B; Approx. Time Counter : 24.8 - 25.4}***

Questions from Committee Members and Responses: ***{Tape : 2; Side : B; Approx. Time Counter : 25.6 - 41}***

Closing by Sponsor: Sen. Wells closed. He distributed a copy of the statute listing the 15 drainages in the A-Closed system. **EXHIBIT(23)** ***{Tape : 2; Side : B; Approx. Time Counter : 41 - 42.8}***

EXECUTIVE ACTION ON HOUSE BILL 158

Rep. Ohs **MOVED HB 158 OFF THE TABLE.** Rep. Raney pointed out the need to pass the bill since some of the tanks could go for twenty years without an inspection.

The question was called. The motion **PASSED** 18-1 with Rep. Hurdle voting no.

Chairman Tash assigned Reps. Ohs, Dale, Stovall, Harper and Erickson to a subcommittee to work on HB 158.

EXHIBIT 19
DATE 3-8-99
SB 235

MOUNTAIN WATER COMPANY

P. O. Box 4826 • 1345 West Broadway • Missoula, Montana 59806 • Phone (406) 721-5570

ARVID M. HILLER
V.P. and General Manager
(406) 721-5570

TESTIMONY OF ARVID M. HILLER
VICE-PRESIDENT AND GENERAL MANAGER OF
MOUNTAIN WATER COMPANY
MISSOULA, MONTANA
AS A SUPPORTER OF

SENATE BILL 235
HOUSE COMMITTEE NATURAL RESOURCES

Mr. Chairman Tash, Ladies and Gentlemen of the Committee,

My name is Arvid Hiller. I am the Vice-President and General Manager of Mountain Water Company in Missoula, Montana. I am here as a proponent of Senate Bill 235. Mountain Water Company is an investor owned water utility which has 18,000+ connections in Missoula, serving potable water to over 50,000 residents. Mountain Water Company is regulated by the Montana Public Service Commission and has been in existence as Mountain Water Company since 1979, when it was purchased from Montana Power Company.

Some of the history of Rattlesnake water use dates back into the early 1900's. There were natural dams at the head waters of the Rattlesnake Creek, and they were added to in the early 1900's to increase the area and the amount of water they would impound. In 1980, the U.S. Congress created an act called the Rattlesnake National Recreation Area and Wilderness Act of 1980. In this act, it recognized the unique nature and importance of the Rattlesnake watershed as a water supply dedicated to municipal use, by saying: *"Nothing in this act (16 USCS 46011 ET SEQ) shall be construed to permit the secretary to affect or diminish any water right which is vested under either state or federal law at the time of enactment of this act (enacted October 19, 1980), nor the rights of the owner of such water right to the customary and usual access, including necessary motorized use over and along existing roads and trails to any facilities used in connection therewith and right to operate and maintain such facilities."*

Historically, the Rattlesnake supplied about 40% of the potable water for Missoula until 1983. In 1983, there was a giardiasis outbreak. As a lot of Montanan's know, it is called backpacker's disease. Because of this, Mountain Water Company discontinued use of the Rattlesnake as an active supply, but it continues to be a valuable emergency supply. Mountain Water Company continues to maintain the dams in the Rattlesnake Wilderness drainage and the functionality of the impoundment and diversion facility just below the recreation area.

Future considerations of need is the growth Western Montana has experienced recently, and that resource needs to be there for the future growth. But not least of the considerations are some of the contamination possibilities that exist within the Missoula area. One is the Milltown Dam that is immediately above the aquifer and has the opportunity to contaminate the Missoula groundwater supply with arsenic and a remote possibility with heavy metals contamination. There are also pending and emerging EPA regulations that have tighter and tighter restrictions on what is allowed in the potable water supplies. Those opportunities exist in the future when the regulations require a certain level, to introduce the Rattlesnake Creek back in with treatment technology to be part of the water supply. One example of this is Radon standards. The standards for Radon are becoming more restrictive and pending in the next couple of years. Those standards will be low enough that, by including the Rattlesnake supply, we could blend it together with the existing groundwater wells in a more economic fashion and serve the community of Missoula.

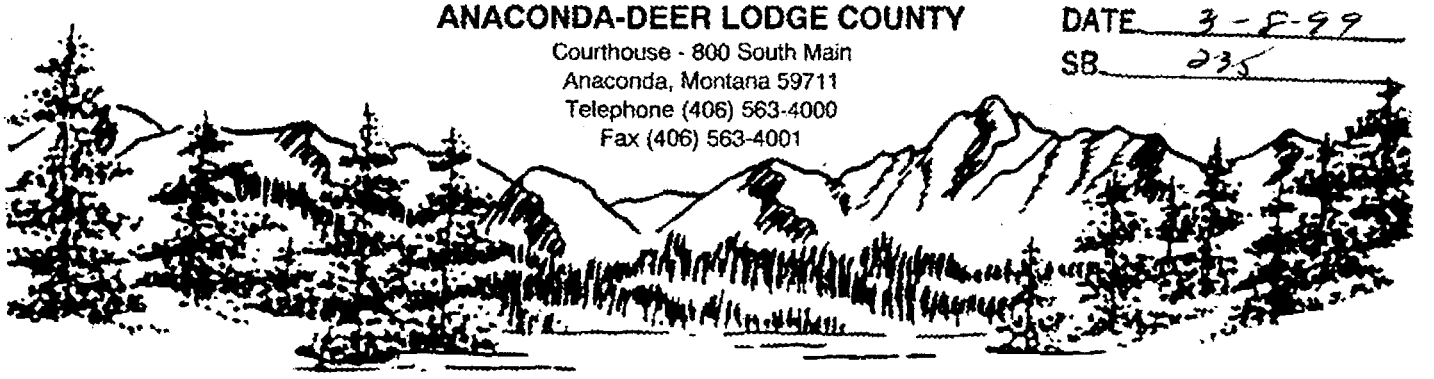
We feel the language of Senate Bill 235 should be in current state statute. When a water supplier serving the needs of the community with drinking water, has maintained and planned for the utilization of water rights for its public, it should be evident there is no intent to abandon that resource for current or future generations. Essentially, that is what Senate Bill 235 does, and I urge your adoption of it.

Thank you very much for your time and consideration in this matter.

Arvid M. Hiller

EXHIBIT 20
DATE 3-8-99
SB 235

ANACONDA-DEER LODGE COUNTY
Courthouse - 800 South Main
Anaconda, Montana 59711
Telephone (406) 563-4000
Fax (406) 563-4001



March 8, 1999

BEFORE THE HOUSE HEARING COMMITTEE ON SENATE BILL 235

Mr. Chairman, members of the committee. I am Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County.

Our classified A-Closed watershed rests on the extreme eastern edge of the Pintler Wilderness Area and contains pristine alpine water that is better than any you can purchase on the shelf of any super market.

Known as the Hearst Lake, Fifer Creek drainage, this water was utilized by the Anaconda Copper Mining Company (later known as the Anaconda Company) for both municipal and industrial applications. The Company obtained Fifer Gulch water rights as early as 1881 and the Hearst Lake water rights in 1898.

Hearst Lake/Fifer Gulch was one of Anaconda's primary sources of water until 1938 when the upper reservoir dam within Fifer Gulch failed. This reservoir had provided storage for water from both watersheds. The source was reactivated in 1967, and Anaconda continued to utilize the water until 1979.

Economics related to the Anaconda Company operations at the Anaconda Smelter and Berkely Pit Mine are thought to be the driving reason for abandoning these water sources. (Historically the Anaconda Company ran both operations, as well as the Anaconda-Butte water systems). Since 1979, the water sources have been used for irrigation and livestock drinking water. Because of its historic corporate ownership, the area has not been impacted by development and public access has been restricted.

After the Fifer Gulch Dam had failed in 1938, the Anaconda Company began using well water. Well water was not used extensively, usually in the winter months or about six months of the year until they brought water on line from Warm Springs Creek and Meyer's Dam located about three miles west of Anaconda. Chlorinating of the water took place at Meyer's Dam.

EXHIBIT 20
DATE 3-8-99
SB 235

ANACONDA-DEER LODGE COUNTY
Courthouse - 800 South Main
Anaconda, Montana 59711
Telephone (406) 563-4000
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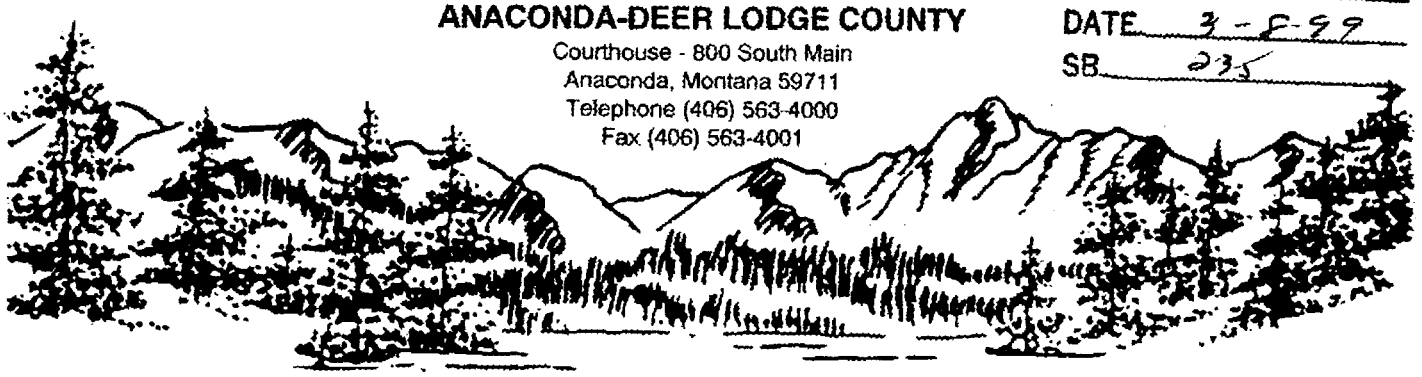

March 8, 1999

BEFORE THE HOUSE HEARING COMMITTEE ON SENATE BILL 235

Mr. Chairman, members of the committee. I am Carl Stetzner, Chief Executive for Anaconda-Deer Lodge County.

Our classified A-Closed watershed rests on the extreme eastern edge of the Pintler Wilderness Area and contains pristine alpine water that is better than any you can purchase on the shelf of any super market.

Known as the Hearst Lake, Fifer Creek drainage, this water was utilized by the Anaconda Copper Mining Company (later known as the Anaconda Company) for both municipal and industrial applications. The Company obtained Fifer Gulch water rights as early as 1881 and the Hearst Lake water rights in 1898.

Hearst Lake/Fifer Gulch was one of Anaconda's primary sources of water until 1938 when the upper reservoir dam within Fifer Gulch failed. This reservoir had provided storage for water from both watersheds. The source was reactivated in 1967, and Anaconda continued to utilize the water until 1979.

Economics related to the Anaconda Company operations at the Anaconda Smelter and Berkely Pit Mine are thought to be the driving reason for abandoning these water sources. (Historically the Anaconda Company ran both operations, as well as the Anaconda-Butte water systems). Since 1979, the water sources have been used for irrigation and livestock drinking water. Because of its historic corporate ownership, the area has not been impacted by development and public access has been restricted.

After the Fifer Gulch Dam had failed in 1938, the Anaconda Company began using well water. Well water was not used extensively, usually in the winter months or about six months of the year until they brought water on line from Warm Springs Creek and Meyer's Dam located about three miles west of Anaconda. Chlorinating of the water took place at Meyer's Dam.

The City of Anaconda no longer has access to water from Meyer's Dam. That water is now owned by the Butte Water Company and is now used by Dennis Washington at its industrial plant in Butte and by the Advanced Silicon Materials Plant at Silver Bow. It is no longer chlorinated and is used only for industrial purposes.

As a result, Anaconda-Deer Lodge County was forced to spend millions of dollars for a well field which is the city's only source of water at the present time. We have also spent thousands of dollars for engineering and design studies for the Fifer Gulch/Hearst Lake watershed. We need this water badly.

The present well field is an insufficient source of water. Last summer, Anaconda had to place restrictions upon the citizens of the community because they were using more water than we could pump.

In addition, the State of Montana has tapped into our source of water for Warm Springs State Hospital, because the surface water and underground sources of water for that area are contaminated. And, just recently, we have been informed that a new housing project will be established in Anaconda adding 52 individual users to the system. So you can see from my point of view that we do have a definite need for the water from this area. It's our best source of water and probably the cheapest since it will be gravity fed water into the system. Therefore, I would really appreciate this committee's support of SB235. And, I would like to thank you, Mr. Chairman, and members of the committee for its time and patience in listening to Deer Lodge County's plea for help.

OFFICE OF THE COUNTY ATTORNEY

Anaconda - Deer Lodge County

EXHIBIT 21
DATE 3-8-99
SB 235

Courthouse- 800 South Main Street
Anaconda, Montana 59711
(406)563-4020 FAX(406)563-4028

MICHAEL B. GRAYSON
County Attorney

JOAN S. BORNEMAN
Deputy County Attorney

March 8, 1999

House of Representatives
Natural Resources Committee

RE: SB 235 Criteria for non-abandonment of municipal water rights

Anaconda-Deer Lodge County requests your support of SB 235, a bill to specify criteria for non-abandonment of municipal water rights.

Uncertainty often causes problems when local governments are planning, or seeking financing for, improvements to municipal water systems. SB 235 will relieve Anaconda-Deer Lodge County of some uncertainty in regards to where we stand with our water rights on Hearst Lake and in Fifer Gulch west of Anaconda.

These water rights were actively used for municipal purposes until 1979, when they were replaced with other water from Silver Lake. In 1994, Anaconda-Deer Lodge County removed itself from surface water altogether due to the requirements of the Safe Drinking Water Act. However, we retain the water rights for Hearst Lake and Fifer Gulch, and are planning to use them in the future as additional need may dictate. We have obtained a filtration waiver from DEQ for the Hearst Lake water, because the quality of the water meets such high standards that no filtration is needed.

We have developed plans to rebuild our Hearst Lake infrastructure, which will cost about one million dollars. However, we are concerned over whether or not we could be deemed to have 'abandoned' our water rights due to non-use for twenty years. There is no pending claim to this effect in water court, and we think we have a fairly good defense to such a claim. However, we are very reluctant to invest this large amount of money based on our water rights without some assurance that the investment will be safe.

SB 235 would give us that assurance, and will allow us to know exactly what actions are required so that our municipal water rights will not be deemed 'abandoned' in some future court action. This bill is very narrowly drafted to only apply to closed "A" watersheds, which are the highest quality waters in the state, which already have been 'earmarked' mainly for municipal use. This bill will allow municipal water suppliers in our situation to have some degree of certainty over what is required to avoid abandonment. We would greatly appreciate your support in this matter.

Sincerely,

Michael B. Grayson
Anaconda-Deer Lodge County Attorney

EXHIBIT 22
DATE 3-8-99
SB 235

17.30.606 STREAM CLASSIFICATION (1) Before streams are classified or standards established or modified, the board shall hold a public hearing.

(a) Notice of the hearing specifying the waters concerned and the classification, standards or modification of them shall be published at least once a week for 3 consecutive weeks in a daily newspaper of general circulation in the area affected.

(b) Notice shall also be mailed directly to persons the department believes may be affected by the proposed action.

(c) The water pollution control advisory council shall be given not less than 30 days prior to first publication to comment on the proposed action.

(d) The general rules of procedure found in ARM 17.4.101 relating to rulemaking will be followed. (History: 75-5-201, MCA; IMP, 75-5-307, MCA; Eff. 12/31/72; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.607 WATER-USE CLASSIFICATIONS--CLARK FORK-COLUMBIA RIVER DRAINAGE EXCEPT THE FLATHEAD AND KOOTENAI RIVER DRAINAGES The water-use classifications adopted for the Clark Fork of the Columbia River drainage are as follows:

(1) Clark Fork River drainage except waters listed in (a)-(n) below B-1

(a) Warm Springs drainage to Myers Dam near Anaconda A-1

(i) Hearst Lake drainage to the Lower Hearst Inlet and Fifer Gulch drainage to the Anaconda city limits. (Anaconda municipal water supply). . . . . .A-Closed

(b) Silver Bow Creek (mainstem) from the confluence of Blacktail Deer Creek to Warm Springs Creek. . . . . I (The concentrator tailings pond and Silver Bow Creek drainage from this pond downstream to Blacktail Deer Creek and the tailings ponds at Warm Springs have no classification.)

(c) Yankee Doodle Creek drainage to and including the North Butte water supply reservoir . . . . . .A-Closed

(d) Basin Creek drainage to and including the South Butte water supply reservoir . . . . . .A-Closed

(e) Clark Fork River (mainstem) from Warm Springs Creek to Cottonwood Creek (near Deer Lodge) C-2

(f) Clark Fork River (mainstem) from Cottonwood Creek to the Little Blackfoot River C-1

(g) Tin Cup Joe Creek drainage to the Deer Lodge water supply intake . . . . . A-Closed

(h) Georgetown Lake and tributaries above Georgetown Dam (headwaters of Flint Creek drainage) A-1

(i) Fred Burr Lake and headwaters from source to the outlet of the lake (Philipsburg water supply) . . . . A-Closed

(j) South Boulder Creek drainage to the Philipsburg water supply intake A-1

(k) Rattlesnake Creek drainage to the Missoula water supply intake . . . . . A-Closed

(l) Packer and Silver Creek drainage (tributaries to the St. Regis River) to the Saltese water supply intake A-1

(m) Ashley Creek drainage to the Thompson Falls water supply intake . . . . . A-Closed

(n) Pilgrim Creek drainage to the Noxon water supply intake A-1

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1988 MAR p. 1191, Eff. 6/10/88; AMD, 1994 MAR p. 3099, Eff. 12/9/94; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.608 WATER-USE CLASSIFICATIONS--FLATHEAD RIVER DRAINAGE The water-use classifications adopted for the Flathead River are as follows:

(1) Flathead River drainage above Flathead Lake except waters listed in (a)-(h) below B-1

(a) Essex Creek drainage to the Essex water supply intake . . . . . A-Closed

(b) Stillwater River (mainstem) from Logan Creek to the Flathead River B-2

(c) Whitefish Lake and its tributaries A-1

(d) Whitefish River (mainstem) from the outlet of Whitefish Lake to the Stillwater River B-2

(e) Haskill Creek drainage to the Whitefish water supply intake A-1

(f) Ashley Creek (mainstem) from Smith Lake to bridge crossing on the airport road about 1 mile south of Kalispell B-2

(g) Ashley Creek (mainstem) from bridge crossing on airport road to the Flathead River C-2

(h) North and middle forks of the Flathead River above their junction A-1

(2) Flathead Lake and its tributaries from Flathead River inlet to US Highway 93 bridge at Polson except Swan River and portions of Hellroaring Creek as listed in (a)-(c) below but including Swan Lake proper and Lake Mary Ronan proper. . A-1

(a) Swan River drainage (except Swan Lake proper) . . B-1

(b) Hellroaring Creek drainage to the Polson water supply intake . . . . . A-Closed

(c) Remainder of Hellroaring Creek drainage B-1

(3) Flathead River drainage below the highway bridge at Polson to confluence with Clark Fork River except tributaries listed in (a)-(h) below B-1

(a) Second Creek drainage to the Ronan water supply intake . . . . . A-Closed

(b) Crow Creek (mainstem) from road crossing in Section 16, T20N, R20W to the Flathead River B-2

(c) Little Bitterroot River (mainstem) from Hubbart Reservoir dam to the Flathead River B-2
(d) Hot Springs Creek drainage to the Hot Springs water supply intake . . . . . A-Closed
(e) Hot Springs Creek (mainstem) from the Hot Springs water supply intake to the Little Bitterroot River C-1
(f) Tributaries to Hot Springs Creek (if any) from the Hot Springs water supply intake to the Little Bitterroot River B-1
(g) Mission Creek drainage to the St. Ignatius water supply intake A-1
(h) Mission Creek (mainstem) from US Highway No. 93 crossing to the Flathead River B-2
(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1982 MAR p. 1745, Eff. 10/1/82; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.609 WATER-USE CLASSIFICATIONS--KOOTENAI RIVER DRAINAGE The water-use classifications adopted for the Kootenai River are as follows:
(1) All waters except those listed in (a)-(d) below . B-1
(a) Deep Creek drainage (tributary to the Tobacco River) to the Fortine water supply intake A-1
(b) Rainy Creek drainage to the W.R. Grace Company water supply intake A-1
(c) Rainy Creek (mainstem) from the W.R. Grace Company water supply intake to the Kootenai River C-1
(d) Flower Creek drainage to the Libby water supply intake A-1
(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES The water-use classifications adopted for the Missouri River are as follows:

(1) Missouri River drainage to and including the Sun River drainage except tributaries listed in (a) through (m) below B-1

(a) East Gallatin River (mainstem) from Montana Highway No. 293 crossing about one-half mile north of Bozeman to Dry Creek about 5 miles east of Manhattan B-2

(b) Lyman and Sourdough (Bozeman) Creek drainages to the Bozeman water supply intakes . . . . . A-Closed

(c) Hyalite Creek drainage to the Bozeman water supply intake A-1

(d) Big Hole River drainage to Butte Water Company intake above Divide A-1

(e) Rattlesnake Creek drainage to the Dillon water supply intake A-1

(f) Indian Creek drainage to the Sheridan water supply intake A-1

(g) Basin Creek drainage to the Basin water supply intake A-1

(h) McClellan Creek drainage to the East Helena water supply intake A-1

(i) Prickly Pear Creek (mainstem) from the Montana Highway No. 433 crossing about 1 mile northwest of East Helena to Lake Helena I

(j) Ten Mile Creek drainage to the Helena water supply intake A-1

(k) Willow Creek drainage to the White Sulphur Springs water supply intake . . . . . A-Closed

(l) Muddy Creek mainstem (tributary of Sun River) . . . I

(m) Sun River (mainstem) from Muddy Creek to the Missouri River B-3

(2) Missouri River drainage from Sun River to Rainbow Dam B-2

(3) Missouri River drainage from Rainbow Dam in Great Falls to the Marias River except waters listed in (a) through (d) below B-3

(a) Belt Creek drainage to and including Otter Creek drainage except portion of O'Brien Creek listed in (i) below B-1

(i) O'Brien Creek drainage to the Neihart water supply intake A-1

(b) Belt Creek (mainstem) from Otter Creek to the Missouri River B-2

(c) Tributaries to Belt Creek from Otter Creek to the Missouri River B-1

(d) Highwood and Shonkin Creek drainages B-1

(4) Marias River drainage except the tributaries and

segments listed in (a) through (f) below B-2
(a) Cutbank Creek drainage except waters listed in (i) and (ii) below B-1
(i) Willow Creek (mainstem) from the Montana Highway No. 464 crossing about one-half mile north of Browning to Cutbank Creek B-2
(ii) Cutbank Creek (mainstem) from Old Maid Miller Coulee near Cut Bank to Birch Creek B-2
(b) Two Medicine Creek drainage except for the waters listed in (i) through (iii) below B-1
(i) Midvale Creek drainage to the East Glacier water supply intake . . . . . A-Closed
(ii) Summit Creek drainage to the Summit water supply intake . . . . . A-Closed
(iii) Two Medicine Creek (mainstem) from Badger Creek to Birch Creek B-2
(c) Dry Fork Marias River (mainstem) from Interstate 15 crossing near Conrad to Marias River B-3
(d) Teton River drainage to and including Deep Creek near Choteau B-1
(e) Marias River mainstem from Tiber Dam to the county road crossing in section 17, T29N, R5E B-1
(f) Teton River below Highway (Interstate) 15 . . . . B-3
(5) Missouri River drainage from Marias River to Fort Peck Dam except waters listed in (a) through (f) below . . . C-3
(a) Missouri River (mainstem) from Marias River to Fort Peck Dam B-3
(b) Eagle Creek drainage to but excluding Dog Creek . B-1
(c) Judith River drainage except waters listed in (i) through (iv) below B-1
(i) Judith River (mainstem) from Big Spring Creek to the Missouri River B-2
(ii) Sage Creek drainage below US Highway 87 . . . . . C-3
(iii) Wolf Creek drainage below US Highway 87 . . . . . C-3
(iv) Tributaries to Judith River from Big Spring Creek to the Missouri River C-3
(d) Cow Creek drainage to but excluding Al's Creek . . B-1
(e) Musselshell River drainage to Deadman's Basin diversion canal above Shawmut except for the water listed in (i) below B-1
(i) Musselshell River (mainstem) from Hopley Creek to Deadman's Basin Diversion Canal near Shawmut B-2
(f) Musselshell River drainage below Deadman's Basin diversion canal above Shawmut except for the waters listed in (i) through (iv) below C-3
(i) Deadman's Basin Reservoir B-1
(ii) Careless and Swimming Woman Creek drainage

above their confluence north of Ryegate B-1
(iii) Flatwillow Creek drainage above US Highway 87 crossing south of Grassrange B-2
(iv) South Willow Creek drainage above county road bridge in T10N, R24E, section 7 . . . . . B-1
(6) Missouri River drainage from Fort Peck Dam to the Milk River B-2
(7) Milk River drainage from source (or from the Glacier National Park Boundary) to the International Boundary . . . B-1
(8) Milk River drainage from the International Boundary to the Missouri River except the tributaries listed in (a) through (d) below B-3
(a) Sage Creek drainage to the section line between sections 1 and 12 T36N R5W B-1
(b) Big Sandy Creek drainage to Town of Big Sandy infiltration wells B-1
(c) Beaver, Little Box Elder and Clear Creek drainage (near Havre) B-1
(d) Peoples Creek drainage to and including the South Fork of Peoples Creek drainage B-1
(9) Missouri River drainage from Milk River to North Dakota boundary except waters listed in (a) through (d) below C-3
(a) Missouri River (mainstem) from Milk River to North Dakota boundary B-3
(b) Wolf Creek drainage near Wolf Point B-2
(c) Antelope Creek drainage near Antelope B-3
(d) Poplar River drainage B-2

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1982 MAR p. 1745, Eff. 10/1/82; AMD, 1984 MAR p. 1802, Eff. 12/14/84; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 2489, Eff. 9/11/98.)

17.30.611 WATER-USE CLASSIFICATION--YELLOWSTONE RIVER DRAINAGE The water-use classifications adopted for the Yellowstone River are as follows:

(1) Yellowstone River drainage to the Laurel water supply intake B-1

(2) Yellowstone River drainage from the Laurel water supply intake to the Billings water supply intake except the tributaries listed in (a)-(c) below B-2

(a) Clarks Fork Yellowstone River drainage from source to the Wyoming state line and from the Wyoming state line to and including Jack Creek near Bridger B-1

(b) Mainstem of the Clarks Fork River from Jack Creek to the Yellowstone River B-2

(c) Tributaries to the Clarks Fork Yellowstone River from Jack Creek to the Yellowstone River except the portion of West Fork of Rock Creek listed in (i) below B-1

(i) West Fork of Rock Creek drainage to the Red Lodge water supply intake A-1

(3) Yellowstone River drainage from the Billings water supply intake to the North Dakota state line and including the Big Horn River drainage except the waters listed in (a)-(f) below C-3

(a) Yellowstone River mainstem B-3

(b) Pryor Creek drainage to Interstate 90 . . . . . B-1

(c) Big Horn drainage above but excluding Williams Coulee near Hardin B-1

(d) Little Big Horn drainage above and including Lodgegrass Creek drainage near Lodge Grass B-1

(e) Remainder of the Little Big Horn drainage B-2

(f) Big Horn River mainstem from Williams Coulee to Yellowstone River B-2

(4) Yellowstone River drainage from Big Horn River to North Dakota boundary except waters listed in (a)-(d) below. C-3

(a) Yellowstone River mainstem from Big Horn River to North Dakota boundary B-3

(b) Tongue River (mainstem) from Wyoming boundary to Prairie Dog Coulee B-2

(c) Tongue River mainstem from Prairie Dog Coulee to Yellowstone River B-3

(d) Fox Creek drainage near Sidney B-2

(History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; AMD, 1988 MAR p. 1191, Eff. 6/10/88; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.620 SPECIFIC SURFACE WATER QUALITY STANDARDS--GENERAL (1) Specific surface water quality standards, along with general provisions in ARM 17.30.635 through 17.30.637, 17.30.640, 17.30.641, 17.30.645 and 17.30.646, protect the beneficial water uses set forth in the water-use descriptions for the following classifications of water.

(2) Standards for organisms of the coliform group are based on a minimum of 5 samples obtained during separate 24-hour periods during any consecutive 30-day period analyzed by the most probable number or equivalent membrane filter methods. (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 9/5/74; AMD, 1980 MAR p. 2252, Eff. 8/1/80; TRANS, from DHES, 1996 MAR p. 1499.)

17.30.621 A-CLOSED CLASSIFICATION STANDARDS (1) Waters classified A-Closed are suitable for drinking, culinary, and food processing purposes after simple disinfection. Water quality is suitable for swimming, recreation, growth, and propagation of fishes and associated aquatic life, although access restrictions to protect public health may limit actual use of A-Closed waters for these uses.

(2) Public access and activities such as livestock grazing and timber harvest are to be controlled by the utility owner under conditions prescribed and orders issued by the department.

(3) No person may violate the following specific water quality standards for waters classified A-Closed:

(a) The geometric mean number of organisms in the coliform group must not exceed 50 per 100 milliliters.

(b) No change from naturally occurring dissolved oxygen levels is allowed.

(c) No change from natural pH is allowed.

(d) No increase above naturally occurring turbidity is allowed.

(e) No increase above naturally occurring water temperature is allowed.

(f) No increases are allowed above naturally occurring concentrations of sediment, settleable solids, oils, or floating solids, which will or are likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(g) No increase in true color is allowed.

(h) No increases of carcinogenic, bioconcentrating, toxic or harmful parameters, pesticides and organic and inorganic materials, including heavy metals, above naturally occurring concentrations, are allowed.

(i) No increase in radioactivity above natural background levels is allowed. (History: 75-5-201, 75-5-301, MCA; IMP, 75-5-301, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff.

HOUSE OF REPRESENTATIVE
ROLL CALL

NATURAL RESOURCES COMMITTEE

DATE 3-8-99

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Tash, Chairman	✓		
Rep. Hal Harper, Vice Chair	✓		
Rep. Cindy Younkin, Vice Chair	✓		
Rep. Rod Bitney	✓		
Rep. Aubyn Curtiss	✓		
Rep. Rick Dale	✓		
Rep. Bill Eggers	✓		
Rep. Ron Erickson	✓		
Rep. David Ewer	✓		
Rep. Gail Gutsche	✓		
Rep. Joan Hurdle	✓		
Rep. Dan McGee	✓		
Rep. Douglas Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr			✓
Rep. Bob Raney	✓		
Rep. Bob Story	✓		
Rep. Jay Stovall	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

NATURAL RESOURCES DATE 3/8/99

BILL NO. SB 96 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
JACK H. DOTY 315 Keith avenue	University Homeowners Missoula, MT 59801		X
WM. H. CLARKE 1330 LOWER LINCOLN HILLS DR	MISSOULA NEIGHBORHOOD NETWORK 59802		X
Lee Arbuckle 509 Raymond Walsh	MT League of Women Voters	X	
Jessy Sorensen EQC	EQC	✓	
Gavin Anderson DOC	DOC	X	
Steve Snezek	MT Assoc. Realtors	X	
Craig Sweet	Self		X
Jamie Marie Sawyer	EQC & GYC	X	
Julie Ippolito	DOWTF		X
Bjiron Kobeski	MT Building Industry Assn.	X	
Chris Gingelli	President, Missoula City Council		X
Lou Ann Crowley	Missoula City Council		X
Mike Kadas	City of Missoula, Mayor	X	
Alec Hansen	CITIES	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

NATURAL RESOURCES DATE 3/8/99

BILL NO. SB 97 SPONSOR(S) Sen. Stang

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Anne Hedges	MEIC	X	
Jerry Sorensen	EQC	✓	
Janet Ellis	MT Audubon	✓	
Gavin Anderson	DOC	X	
Steve Snezek	MT Assoc. of Realtors	X	
DENNIS LAY	MARLS	X	
Linda Stoll	MT Assn of Planners	✓	
Dianne Roth Barbo	MT Sierra Club	✓	
Byron Rhodes	Mt Building Ind.	✓	
Mike Kadas	City of Missoula	✓	

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HR:1993
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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

NATURAL RESOURCES DATE 3/8/99

BILL NO. SB 235 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Arvid M. Hillert	Mountain Water Co	X	
CARL J STETZNER	ANACONDA-DEERLODGE CO	X	
Mike Grayson	" "	X	
Phillip J. Forbes	City of Bozeman	✓	
Byron Rhodes	Mt Building Ind.	X	

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HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on March 10, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Rod Bitney (R)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 276, SB 429, SB 371, SB 383, 3/5/1999
Executive Action: SB 235, SB 97, SB 96

under zoning, you have to go through the planning board, county commissioners, zoning board and there is a specific mechanism to protest. ***{Tape : 2; Side : A; Approx. Time Counter : 20 - 27.4}***

Rep. Gutsche asked if public input was addressed in the bill. Mr. McCormick replied there was public input opportunities. The distinction was in the type of public opinion. Public input into the subdivision is maintained in the bill. However, it does change the level of public opinion for establishing a TDR system. There could be less public opinion for a TDR than under current zoning enabling legislation. ***{Tape : 2; Side : A; Approx. Time Counter : 27.4 - 28.5}***

Closing by Sponsor: Sen. Hargrove closed. He pointed out the top down zoning would not happen in Montana. This would give incentive to do things. Zoning and money are government controls. This is all market driven. He said the bill was not regulatory, and did not have that intent. He described problems with the current twenty acre subdivisions where there were twenty roads for twenty houses. He pointed out the people who were denying the subdivisions now were the planners. This was an opportunity for the planners to do it the other way around, to look at the whole thing scientifically. He said micro-management should be guarded against. ***{Tape : 2; Side : A; Approx. Time Counter : 28.5 - 42.5}***

EXECUTIVE ACTION ON SENATE BILL 235

Rep. Ohs **MOVED DO CONCUR** ON SB 235.

Rep. Harper said the bill took the place of a reserved water right for a municipality. He was concerned about the inclusion of private entities in the bill. He **MOVED** an amendment.

Rep. Younkin said she would resist the amendment. She said it was the right that was being protected, not the owner of the right. This bill was specific to a municipal right on an A-closed stream. It doesn't matter who owns it, it still gets used for the same thing. Rep. McGee pointed out if you eliminated "private" you would eliminate the Missoula water entity that takes care of the municipal facilities. Rep. Harper felt this was separating a category of rights that did not need to be there. Rep. Eggers clarified that the right should be in the public sector, not in the private sector. ***{Tape : 2; Side : A; Approx. Time Counter : 42.5 - 48.4}***

The question was called on the amendment. Rep. Harper felt a separate, publicly owned water right was inconsistent. Rep. Tash

said the amendment was not needed. One of the purposes was to encourage joint venture between government and private entities. There are a lot of examples where private entities could do a better job with a public service and this was one prime example. ***{Tape : 2; Side : A; Approx. Time Counter : 48.4 - 50.3}***

The question was called on the Harper amendment. The amendment failed 16-4 with Reps. Hurdle, Ewer, Erickson and Harper voting yes.

The question was called on SB 235. The motion **DO CONCUR PASSED** 19-1.

EXECUTIVE ACTION ON SENATE BILL 97

Rep. Eggers **MOVED DO CONCUR.**

Rep. McGee said he was opposed to the bill. This would result in statewide zoning. He felt this would remove the last visage of private property owner rights in the state of Montana. ***{Tape : 2; Side : A; Approx. Time Counter : 59 - 60}***

Rep. Tash pointed out the EQC had studied this issue. Growth management was needed rather than trying to enforce subdivision laws that have proven to be not as effective as what they were intended to be. ***{Tape : 2; Side : A; Approx. Time Counter : 60 - 62.2}***

Rep. Erickson **MOVED** the Kadas amendment. ***{Tape : 2; Side : B; Approx. Time Counter : 1.6}***

Rep. Raney said he was against those amendments. The reason was it defeated the purpose of the bill. Now it says you will do a planning process but the neighborhood is exempted. Mary Vandenbosch had prepared the amendment.

Rep. Tash said the example for the need of the bill was the painful turf battle process from Missoula. He was opposed to the amendment.

Rep. Ohs commented that the amendment was incomplete and he did not know the effect to the bill.

Rep. McGee **MOVED TO TABLE** the bill. The motion **FAILED** on a 10-10 vote.

Rep. Eggers **MOVED** the Kadas Amendment. The motion **FAILED.**

AN ACT SPECIFYING CRITERIA FOR A PRESUMPTION OF NONABANDONMENT FOR MUNICIPAL WATER RIGHTS IN WATERS CLASSIFIED AS "A-CLOSED"; AMENDING SECTION 85-2-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, waters classified A-Closed pursuant to ARM 17.30.621 represent the highest quality waters in Montana; and

WHEREAS, almost all A-Closed drainages originate in remote, largely inaccessible, alpine settings that afford maximum natural protection for water quality; and

WHEREAS, there is either no habitation or development or extremely limited habitation or development in A-Closed drainages; and

WHEREAS, the existing municipal water rights in each of those drainages have been used for municipal supply purposes and will be needed in many of the drainages; and

WHEREAS, the high elevation alpine settings of A-Closed drainages provide gravity flowing systems that reduce the need for pumping facilities and related energy costs for Montana citizens; and

WHEREAS, the superior mineral, radiological, and microbiological quality of A-Closed waters renders them especially suitable as a raw source of municipal drinking water; and

WHEREAS, there are few gravity flow alternative sources for high quality municipal water, and therefore the loss of the right to use these high quality waters would result in the loss of a unique and irreplaceable natural resource.

THEREFORE, the 56th Legislature of the State of Montana finds that it is appropriate to enact legislation to establish a limited presumption of nonabandonment for municipal water rights situated in A-Closed basins.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-227, MCA, is amended to read:

"**85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment -- criteria for presumption of municipal nonabandonment.** (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) ~~A~~ Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use from a water classified by the board of environmental review before January 1, 1999, as A-Closed under administrative rule is a unique water suited to municipal water use and that such a claim by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to an emergency or supplemental municipal water supply."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective on passage and approval.

- END -